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Implementation of NF/NF and T&L Regulations in France

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Report Highlights:

France implemented the European regulations on Novel Food /Novel Feed and biotech traceability and labeling on April 18, 2004. The Fraud Control Office of the French Ministry of Economy, Finance and Industry (DGCCRF) is the authority enforcing compliance with the regulation. DGCCRF has published several informational fact sheets to help industry adapt to the new regulations, and also released specific to France rules for negative labeling. National legislation is also expected for biotech labeling in the HRI sector. The French food industry was well prepared for the new regulations through product reformulation and document guarantees from suppliers on product traceability. Greenpeace is acting as watch dog, products with positive labeling are on its website.

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Executive Summary

France implemented the European regulations on Novel Food /Novel Feed and biotech traceability and labeling on April 18, 2004. The Fraud Control Office of the French Ministry of Economy, Finance and Industry (DGCCRF) is the authority enforcing compliance with the regulation. DGCCRF has published several informational fact sheets to help industry adapt to the new regulations, and also released specific to France rules for negative labeling. National legislation is also expected for biotech labeling in the HRI sector. The French food industry was well prepared for the new regulations through product reformulation and document guarantees from suppliers on product traceability. Greenpeace is acting as watch dog, products with positive labeling are on its website.

1. French Authority in Charge of Implementing the Regulations

a. DGCCRF Communication

The Fraud Control Office of the French Ministry of Economy, Finance and Industry (DGCCRF) is in charge of implementing these regulations in France. In order to help French operators understand and properly implement these regulations, DGCCRF has published 4 information fact sheets:

- Fact sheet # 2004-52, dated March 31, 2004: transitional measures to regulation EC 1829/2003 on biotech labeling,
- Fact sheet # 2004-113, dated August 16, 2004: non-biotech labeling,
- Fact sheet # 2004-136, dated October 12, 2004: labeling for food products and animal feed products containing genetically modified products or produced from biotech products (EC 1829/2003 Regulation)
- Fact sheet # 2004-135, dated October 12, 2004: traceability of biotech products and their derived products in food (EC 1830/2003 Regulation)

These fact sheets are all available on DGCCRF website: <http://www.finances.gouv.fr/dgccrf>

b. Biotech Sampling and Testing

Sampling and testing of products is performed by DGCCRF according to the guidelines proposed by the EU Commission, although DGCCRF considers these guidelines difficult to follow: the suggested sampling is considered excessive. DGCCRF has a laboratory in Strasbourg (Alsace) that will do the testing. DGCCRF currently performs sampling and testing on food, animal feed and planting seeds and the results of their analyses will be available starting in late 2004.

Note: According to the Regulation EC 1829/2003, each biotech product officially approved in the future by EU authorities will be tested.

c. Fines and Penalties

Fines and penalties for noncompliance with the 1829/2003 Regulation are similar to those used for noncompliance with other food/feed labeling regulations. If DGCCRF finds a product that does not comply, the operator is given a warning and asked to comply. DGCCRF

follows up with additional controls on the same product to confirm compliance. If the operator does not comply, he can be charged with publishing misleading information (in French, "délit de tromperie") and condemned to spend a maximum of 2 years in prison and a fine of 37,500 euros. Alternatively, the operator can be asked to pay fines ("contraventions") of up to 450 euros per label that does not conform to the regulation.

Please note that the first "operator" in France not implementing the regulation is the one penalized by DGCCRF. For example, the French importer of a U.S. product will be penalized if the product is not correctly labelled. A French distributor can also be penalized for nonconformity if the labeling is not adequate at its level, but was adequate at the level of its suppliers.

2. French Only Regulation

a. Non-Biotech Labeling

Most DGCCRF fact sheets clarify EC Regulations, however, fact sheet #2004-113 concerning non-biotech labeling is specific to France, as EC Regulations do not cover this type of labeling.

This fact sheet specifies the labeling requirements for products that state they are "non-biotech," "biotech-free," or "PCR negative."

- The product cannot contain any biotechnology, or anything above the detection threshold of 0.1%, not the 0.9% threshold used in the EC Regulations for positive labeling.
- No genetically modified organism, product derived from genetically modified organism, or obtained with the help of a genetically modified organism (such as amino acids, vitamins or enzymes) can have been used at any processing step of the product.
- When negative labeling is on one ingredient of a final product, it must not be misleading so that the final user of the product should not understand that the whole product is biotech-free.
- Negative labeling cannot be used if a product can potentially contain biotech material. However, general statements like "no genetically modified wheat is authorized in Europe" are authorized.
- Negative labeling indicating "derived from non-biotech seeds" is said to be misleading if the final product could contain adventitious biotech material.
- Organic products cannot be labeled as biotech-free only because they are organic. Negative labeling can only be used if the biotech content is lower than the threshold of 0.1%, as is the case for non-organic products.

Food products labeled as non-GM currently available on the French market are mainly canned sweet corn, health-oriented products and baby food.

b. Food in HRI sector

Under EC Regulation 1829/2003, the EU Commission considers that non-packaged (bulk) food products sold in hotels, restaurants and institutions (HRI) is covered by the biotech labeling regulations only if these products are not transformed or elaborated (warmed, cut, prepared, etc.) on the site of the hotel, restaurant or institution. For the EU Commission, food products transformed on the site of the HRI are not covered by biotech labelling regulations.

In France, DGCCRF believes that consumers should be informed whether food products are transformed or elaborated on site. A decree has been prepared by an inter-ministerial group and is currently being reviewed by the "Conseil d'Etat," a committee that rules if any new legislation is in conformity with the French Constitution.

3. Impact on the French Food and Feed Industry

a. Food Industry

The French food industry reports being well prepared for the new regulations. It has been reformulating their products or asking for guarantees from its suppliers before the 1829/2003 Regulation entered into force. For example, soybean oil is no longer being used in most of food products, and lecithin comes from soybeans grown in non-biotech areas. The French Food Industry Association (ANIA) indicates that the regulation on labeling of food produced with biotech microorganisms has been delayed by the EU Commission to late 2005: the French food industry benefits from this delay, since a wide range of food products are processed with genetically modified microorganisms products, such as enzymes or amino acids. Finally, ANIA currently believes that the French food industry is under more pressure from biotech opponents like Greenpeace than from regulatory authorities (DGCCRF) in terms of T&L watch. <http://www.ania.net>

Greenpeace France has organized a website with all the products, supermarket chains and cities where food products labeled as containing biotechnology are listed and photographed. Greenpeace calls these retailers « shops of horrors. » The website calls for volunteers to seek out food products containing biotechnology and report it. Greenpeace France is now turning to animal products and is putting pressure on food processors to label meat products and dairy products as derived from biotech and biotech feed. <http://www.greenpeace.fr>

France's leading food retailer Carrefour continues to maintain its position on biotech products. Carrefour is committed to supplying food products sold under their brand name without biotech labeling, in other words products that test under the 0.9% level. Carrefour asks that a HACCP system be put in place in the plants processing food products under the Carrefour brand and under private brands, so that there is no cross-contamination between the two flows.

b. Feed Industry

The French feed compounders association (SNIA) is not happy that EU Regulation 1829/2003 sets a 0.9% threshold for "adventitious and technically inevitable presence" of biotech products, since this can be interpreted in various ways. As in the food sector, the feed sector was prepared for the new Regulation and implemented a 1% threshold prior to the 1829/2003 Regulation, on a voluntary basis since there was no European rule on for feed.

Like DGCCRF, SNIA also considers the EU Commission guidelines for sampling as difficult and expensive in practice.

Currently, soybean meal imported in France can be broken down as follows:

- 75% of standard product, not tested, and labeled as containing biotech;
- 5% of Hard Identity Preserved (IP) product, which is traced back from the field to guarantee non-biotech in origin; and
- 20% include 3 categories:
 - o products labeled as derived from biotech and below 0.9% when PCR-tested,
 - o products not labeled as derived from biotech and below 0.9% when PCR-tested, and
 - o Soft IP products, traced back from the crushing plant

<http://www.nutritionanimale.org>

Carrefour started sourcing non-biotech feed from Brazil in 2000. This soybean meal based feed is produced in Brazil under contract and used in France to feed animals, which in turn are sold as meat cuts under the Carrefour brand. There are currently 250,000 MT of soybean meal imported annually under these hard IP standards. Under agreement tests are made in Brazil on the planting seeds, in the fields, in the storage silo, at the crushing plant, and at the Brazilian port of export and French port of entry, so that the biotech content is no more than 0.5% at the French port of entry. Pork, poultry, egg and trout products sold under the Carrefour brand name are products derived from animals fed with this hard IP soybean meal. Bunge and Soules-Caf are the two importers based in France working with Carrefour on these products.